

REMARKS

SUMMARY:

The subject application sets forth claims 1-22, of which claims 1, 6, 11 and 16 are independent claims.

The detailed action dated February 8, 2005 set forth several characterizations of the subject application. Claims 1, 6, 11 and 16 stand rejected under 35 U.S.C. §102(b) as being anticipated by Schmidt ("Wrapper Facade – A Structural Pattern for Encapsulating Functions within Classes"). Claims 2-4, 7-9, 12-14 and 17-19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Schmidt. Claims 5, 10, 15 and 20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Schmidt in view of U.S. Patent No. 5,732,270 (Foody et al.).

Responses to each of the characterizations outlined above, including a traversal of each prior art rejection, will follow in order as presented by the Examiner in the February 8, 2005 Office Action.

Remarks are also respectfully presented in support of a request to withdraw the finality of the recent Office Action and to enter all previously submitted amendments as well as the presently requested amendments.

REQUEST FOR WITHDRAWAL OF FINAL REJECTION:

In response to the initial Office Action in the subject case, Applicants previously submitted new claims 21 and 22 for consideration. The appropriate fees were paid and entered for the addition of two new dependent claims, as evident in the fee transmittal sheet accompanying the previous response filed on September 13, 2004. **The February 8, 2005 Office Action, however, makes no acknowledgement of such previously filed claims 21-22 and respectfully is incomplete with respect to proper examination of such claims.**

Applicants note in accordance with §714.20 of the MPEP that as a general rule, amendments should not be entered in part. Since previous amendments to the original specification and to original claims 6, 10, 11, 15 and 18 were apparently entered and

acknowledged by the Examiner, **the previous amendments adding new claims 21 and 22 should also have been entered and considered.**

Applicants further note that 37 C.F.R. §1.104(b) establishes that an examiner's action should be complete as to all matters. The nature of examination as further recommended in §707.07(i) is such that in every office action, each pending claim should be mentioned by number, and its treatment or status given. The recent February 8, 2005 Office Action makes no mention of claims 21-22 and therefore is incomplete with respect to proper treatment of such claims.

In light of the above situation, especially the fact that previously presented claims 21 and 22 respectfully have not received consideration and complete examination, Applicants submit that the final rejection raised in the recent Office Action is premature. As afforded by §706.07(c)-(d) of the MPEP, Applicants respectfully request that the finality of the recent Office Action be withdrawn so that appropriate consideration of previously submitted claims 21 and 22 can ensue.

REQUEST FOR ENTRY OF AMENDMENTS:

In addition to the requested consideration of previously submitted claims 21 and 22, Applicants further request entry of the currently submitted amendments to claims 1, 6, 11 and 16. These amendments are presented, without entry of any new matter, and are otherwise intended as simply clarifications or other improvements on claim language per the Examiner's helpful comments in the February 8, 2005 Office Action, and are not intended to result in any other substantive effect with respect to their scope.

The Examiner in the recent detailed action (numbered page 4) alleges that arguments previously made by Applicants with respect to independent claim 1 (and certain parallels of independent claims 6, 11 and 16) are not commensurate with the scope of the claims. Without intending to alter the scope of the claims, each independent claim 1, 6, 11 and 16 has been requested for amendment herewith, to clarify the claim language in such context.

Specifically, the Examiner noted with respect to the object to object communication using a component framework environment, that the claim language

does not require that the communication exist across multiple distinct servers as would (allegedly) be commensurate with the scope of the submitted arguments. In response, Applicants have included in the presently requested amendment to claim 1 that the at least two objects identified from a plurality of objects to communicate exist in separate and distinct server locations. Claims 6 and 16 respectively incorporate language that specifically sets forth that the component framework exists across multiple distinct servers. Claim 11 amended as presently requested clarifies that the at least two objects to communicate exist within a computer system that exists across multiple servers. The revised language in claims 1, 6, 11 and 16 is intended to clarify that the claim language and corresponding arguments are commensurate in scope.

Since the finality of the previous Office Action should be withdrawn, the aforementioned presently submitted amendments should be entered as a matter of right. Also, since the amendments comply with requirements of form set forth in the previous office action for consideration of such claims in light of the arguments presented, such amendments comply with 37 C.F.R. §1.116(b). As such, even if the finality of the recent Office Action is deemed to have been appropriate, such present amendments should still be entered to comply with requirements of form and clarify claim recitations per the Examiner's interpretation of the claim language.

BACKGROUND CASE LAW RE 35 U.S.C. §102 & §103:

Before setting forth a discussion of the prior art patents applied in the recent Final Office Action, it is respectfully submitted that controlling case law has frequently addressed rejections under Sections 102 and Section 103.

"For a prior art reference to anticipate in terms of 35 U.S.C Section 102, every element of the claimed invention must be identically shown in a single reference." Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 677, 7 U.S.P.Q.2d 1315, 1317 (Fed Cir, 1988; emphasis added). The disclosed elements must be arranged as in the claim under review. See Lindemann Machinefabrik v. American Hoist & Derrick Co., 730 F.2d 1452, 1458, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984). If any claim, element, or step is absent from the reference that is being relied upon, there is no anticipation.

Kloster Speedsteel AB v. Crucible, Inc., 793 F.2d 1565, 230 U.S.P.Q. 81 (Fed. Cir. 1986). Anticipation under 35 U.S.C. Section 102 requires that there be an identity of invention. See Shatterproof Glass Corp. v. Libbey-Owens Ford Co., 758 F.2d 613, ___, 225 U.S.P.Q. 635, 637 (Fed. Cir. 1985). In PTO proceedings, claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. In re Sneed, 710 F.2d 1544, 1548, 218 U.S.P.Q. 385, 388 (Fed. Cir. 1983).

In addition to the well-known required multi-step analysis of Graham v. John Deere Co., 381 U.S. 1, 148 U.S.P.Q. 459 (S. Ct. 1966), and its progeny, the Court of Appeals for the Federal Circuit has on numerous occasions offered its guidance concerning the propriety of Section 103 rejections.

Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so. (emphasis original)

ACS Hospital Systems, Inc. v. Montefiore Hospital, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984).

The task of the Patent Office is essentially a burden of proof not just to show prior patents with selected elements similar to respective parts of a claimed combination, but to show teachings to support obviously combining the elements in the manner claimed.

Virtually all inventions are necessarily combinations of old elements. The notion, therefore, that combination claims can be declared invalid merely upon finding similar elements in separate prior patents would necessarily destroy virtually all patents and cannot be the law under the statute, ' 103. (footnotes omitted)

Panduit Corp. v. Dennison Manufacturing Co., 1 U.S.P.Q. 2d 1593, 1603 (Fed. Cir. 1987).

In In re Deminski, 230 U.S.P.Q. 313 (Fed. Cir. 1986), the court reversed a Patent Office Board of Appeals decision rejecting claims for obviousness, saying: "There [was] nothing in the prior art references, singly or in combination, 'to suggest the desirability,

and thus the obviousness' of the [claimed subject matter]." Id. at 315; emphasis original. The court noted that the relied-on reference did not address the technical problem addressed by the claimed invention (and in fact taught away from the Applicant's invention), and stated the well-established principle that "[h]indsight analysis is clearly improper. . . ." Id. at 316.

In Bausch & Lomb v. Barnes-Hind/Hydrocurve, 230 U.S.P.Q. 416 (Fed. Cir. 1986), the court vacated a district court holding of invalidity for obviousness. In doing so, the district court was criticized for viewing teachings from the prior art in isolation, instead of considering the prior art references in their entirety; for entering the tempting but forbidden zone of hindsight analysis; for failing to view the claimed invention as a whole; and for disregarding express claim limitations. Id. at 419, 420.

It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art. (citations omitted)

Bausch & Lomb v. Barnes-Hind/Hydrocurve, 230 U.S.P.Q. 416, 419 (Fed. Cir. 1986). (emphasis added)

The Supreme Court in Graham and Adams . . . foreclosed the use of substitutes for facts in determining obviousness under section 103. The legal conclusion of obviousness must be supported by facts. [footnote omitted] Where the legal conclusion is not supported by facts, it cannot stand. . . .

A rejection based on section 103 clearly must rest on a factual basis, and these facts must be interpreted without hindsight reconstruction of the invention from the prior art. . . . It [the Patent Office] may not, because it may doubt that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis. . . .

[W]e may not resolve doubts in favor of the Patent Office determination when there are deficiencies in the record as to the necessary factual bases supporting its legal conclusion of obviousness. (emphasis original)

In re Warner, 379 F.2d 1011, ___, 154 U.S.P.Q. 173, 177, 178 (C.C.P.A. 1967).

Finally, the PTO Board of Appeals noted the following in Ex parte Clapp:
"[S]implicity and hindsight are not proper criteria for resolving the issue of obviousness."
" Ex parte Clapp, 227 U.S.P.Q. 972, 973 (PTO Bd. App. 1985).

PRIOR ART REJECTIONS (CLAIMS 1-20):

Original claims 1, 6, 11 and 16 stand rejected under 35 U.S.C. §102(b) as being anticipated by Schmidt ("Wrapper Facade – A Structural Pattern for Encapsulating Functions within Classes"). Original claims 2-4, 7-9, 12-14 and 17-19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Schmidt. Original claims 5, 10, 15 and 20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Schmidt in view of U.S. Patent No. 5,732,270 (Foody et al.). Based on the following remarks, Applicants respectfully traverse such alleged unpatentability and request reconsideration of claims 1-20 and previously presented new claims 21 and 22.

Claim 1 amended as presently requested sets forth a system for providing object to object communication, including means for identifying at least two objects in separate and distinct server locations from a plurality of objects to communicate, means for locating the at least two objects to communicate, and means for using a component framework to enable the communication of the at least two objects. Claim 6 sets forth a related method for providing object to object communications, whereby a component framework that exists across multiple servers is used. Various logic related to a computer readable medium set forth in claim 11 requires that objects to communicate exist in a computer system that exists across multiple servers. Claim 16 concerns a system for providing object to object communication, including in part a component framework that exists across multiple servers.

As depicted in Figures 2 and 3 of the original specification and as described in the subject application's specification (see pg. 9, line 17 – pg. 10, line 7), a component framework exists among multiple servers, each containing a number of respective components that need to communicate. Communicating components 43, 45, 63, 65

exist and communicate via a component framework that includes at least server A (element 41) and server B (element 61).

The February 8, 2005 Office Action cites Schmidt (“Wrapper Facade – A Structural Pattern for Encapsulating Functions within Classes”) and alleges that such reference discloses all the features of claim 1. However, there are several fundamental differences between the low-level functionality of the technology disclosed in Schmidt and the technologies set forth in respective claims 1, 6, 11 and 16. Claims 1, 6, 11 and 16 employ systems and methods in which object to object communication is effected across multiple distinct servers or in at least two separate and distinct server locations. The technology of Schmidt, however, concerns a client-server based communication system and deals with communication among different peripheral components linked through a single central server. (See page 1 and Figure 1 of Schmidt.)

Based on the above distinctions, Applicants respectfully submit that Schmidt fails to disclose every element set forth in present claims 1, 6, 11 and 16, specifically the utilization of communication across at least two separate and distinct server locations or the communication via a component framework that exists across multiple servers. As such, Applicants submit that claims 1, 6, 11 and 16 are in condition for allowance and acknowledgement of the same is earnestly solicited. Furthermore, since claims 2-5, 7-10, 12-15 and 17-22 respectively and variously depend from otherwise allowable independent claims 1, 6, 11 and 16 and further limit same, claims all claims 1-22 should be allowed.

CONCLUSION:


Inasmuch as all outstanding issues have been addressed, it is respectfully submitted that the present application, including presently clarified claims 1-22 as requested to be amended herewith, is in complete condition for issuance of a formal Notice of Allowance upon entry of the presently requested amendments, and action to such effect is earnestly solicited.

The Examiner is invited to telephone the undersigned at his convenience should only minor issues remain after consideration of this response in order to permit early resolution of same.

Respectfully submitted,

DORITY & MANNING,
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